

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Arkansas 49, Inc.)	CSR-6207-A
)	
Petition For Modification of the Television Market)	
of Television Station KYPX (TV), Camden,)	
Arkansas)	

MEMORANDUM OPINION AND ORDER

Adopted: November 13, 2003

Released: November 18, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Arkansas 49, Inc., licensee of television broadcast station KYPX (Ch. 49), Camden, Arkansas (“KYPX”), filed the above-captioned petition for special relief seeking to modify the Little Rock-Pine Bluff, Arkansas designated market area (“DMA”) to include nineteen communities (“cable communities”)¹ in the television market of KYPX for the purposes of the Commission’s cable television mandatory broadcast signal carriage rules. Classic Cable, Inc. (Classic) operates cable television systems in the cable communities. Classic filed an opposition to which KYPX replied. For the reasons discussed below, we grant, in part, KYPX’s petition, and deny the remainder of the petition.

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (“Must Carry Order”)*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹KYPX lists the following nineteen communities which it seeks to include in its television market: Buckner, Calion, Emerson, Emmet, Fountain Hill, Hamburg, Junction City, Lewisville, Norphlet, Smackover, Stamps, and Taylor, Arkansas; and Bernice, Cotton Valley, Dubberly, Dubach, Junction City, Sarpeta, and Sibley, Louisiana; as well as nearby areas served by Classic in these cable communities. Petition at 1.

²8 FCC Rcd 2965, 2976-1977 (1993).

³Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. §76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁴

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁵

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁶

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

⁴For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁷

The Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁸

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁹

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such

⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁸*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

⁹The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

as station advertising and sales data or viewer contribution records.¹⁰

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed with a filing fee. The *Modification Final Report and Order* provides that parties may continue to submit additional evidence that they deem appropriate.

II. DISCUSSION

5. The issue before us is whether to grant KYPX's request to include the cable communities in its television market which would allow it to assert mandatory carriage rights on Classic's cable systems serving the cable communities.¹¹ KYPX is licensed to Camden, Arkansas, which is in Little Rock-Pine Bluff, Arkansas DMA. The cable communities are located in the Monroe, Louisiana-El Dorado, Arkansas DMA, and the Shreveport, Louisiana DMA.¹² Considering the relevant facts in the record, we believe that KYPX's market modification petition is a proper request to redraw DMA boundaries to make them congruous with market realities with regard to the cable communities of Calion, Emerson, Fountain Hill, Hamburg, Junction City, Norphlet, Smackover, and Taylor, Arkansas; and Bernice, Dubach, and Junction City, Louisiana. However, we deny the petition as it pertains to the cable communities of Buckner, Emmet, Lewisville, and Stamps, Arkansas; and Cotton Valley, Dubberly, Sarpeta, and Sibley, Louisiana.

6. In support of its petition, KYPX states that although it has not been historically carried by the cable systems in the cable communities, is not included in local television listings, and does not have high ratings in the cable communities, these facts are not controlling because it is a relatively new station licensed in 2000, and is a specialty station devoting about 60 percent of its broadcast time to religious and home-shopping programming.¹³ KYPX also explains that Classic carries in the cable communities other stations located in the Little Rock DMA, all of these stations are more distant from the cable communities than KYPX, and the transmitter sites for these stations are located on the average 96.7 miles from the cable communities whereas KYPX's transmitter is an average 37.5 miles from the cable communities with distances ranging from four to 59 miles.¹⁴ KYPX further asserts that it provides local service to the cable communities. In support of this claim, KYPX includes a Longley-Rice signal coverage map which KYPX states reflects that it provides actual City Grade, Grade A, or Grade B signal coverage to the cable communities, and that by providing at least Grade B coverage, KYPX has demonstrated local service.¹⁵ KYPX, moreover, states that it furnishes local service by rebroadcasting the local news of a Little Rock station, and by broadcasting programs not carried by other stations such as the sporting events of local semi-professional football and hockey teams.¹⁶ Finally, KYPX alleges that the station and the cable communities are linked physically and economically.¹⁷

¹⁰47 C.F.R. §76.59(b).

¹¹Petition at 1.

¹²*Id.* at 1-2.

¹³*Id.* at 4-6, and Exhibits I, II and III.

¹⁴*Id.* at 6-8, and Exhibits IV, V and VI.

¹⁵*Id.* at 9-10, and Exhibits VII and VIII.

¹⁶*Id.* at 10-11.

¹⁷*Id.* at 11-14, and Exhibits VII, VIII and IX.

7. In its opposition, Classic states that KYPX's petition should be dismissed because it does not provide information required by Section 76.59 of the Commission's rules, namely, the petition does not provide "published audience data for the relevant station showing its average all day audience... for both cable and noncable households or other specific audience indicia..."¹⁸ Classic also asserts that KYPX does not qualify as a specialty station because it fails to broadcast specialty programming during one-third of its weekly prime-time schedule.¹⁹ Further, Classic claims that KYPX is not a new station because it has been on the air for more than three years, and has had sufficient time to establish ratings if there were local interest in the station.²⁰ In response to KYPX's statement that it provides local service to the cable communities by broadcasting the games of two local semi-professional teams, Classic explains that the teams are located in Little Rock in the Little Rock DMA, and, therefore, these broadcasts do not involve sporting events occurring in the cable communities, and that one of the teams may soon relocate.²¹ Concerning KYPX's statement that it rebroadcast the local news of a Little Rock station, Classic states that the Little Rock station is already being carried by Classic in the cable communities, and KYPX's rebroadcast of this station, therefore, merely duplicates programming already available on the cable systems in the cable communities.²²

8. In its reply, KYPX again asserts that it meets all of the statutory factors, except for ratings.²³ With regard to Classic's claim that KYPX's petition should be dismissed because it failed to provide information concerning its ratings in the cable communities, KYPX asserts that ratings or audience data is unnecessary because it concedes that it does not have ratings, and to provide information to address this statutory factor would be expensive.²⁴ Further, KYPX argues that lack of ratings and historic carriage in the cable communities is not controlling because KYPX is a specialty station.²⁵ In response to Classic's claim that KYPX is not a specialty station because it does not broadcast specialty programming during one-third of the prime-time hours, KYPX claims that the amount of specialty programming necessary to qualify as a specialty station has evolved into a policy that does not include prime-time, and, nevertheless, KYPX provides specialty programming for at least one-third of the prime-time period when its program "Miracle Pets" is included. KYPX explains that this program is a religious program because it "focuses on the 'miracles' God granted the persons in the episode by having their pets or other animals, through the hand of God, save their lives..."²⁶ Finally, KYPX concedes that the two semi-professional teams are in Little Rock, but claims it should get credit for carrying these teams because they are close to the cable communities.²⁷

9. With regard to the first statutory factor, namely, "whether the station or other stations located in the same area, have been historically carried on the cable system or systems within such

¹⁸Opposition at 2, quoting 47 C.F.R. §76.59(b)(6).

¹⁹*Id.* at 3-5.

²⁰*Id.* at 5, 6-7.

²¹*Id.* at 5, and Exhibit A.

²²*Id.* at 5-6.

²³Reply at 1-2.

²⁴*Id.* at 3.

²⁵*Id.* at 3 n.6.

²⁶*Id.* at 4-5.

²⁷*Id.* at 6-7.

community,” KYPX concedes that it has not been historically carried in the cable communities, but points out that Classic carries other stations located in the Little Rock DMA that are more distant from the cable communities.²⁷ These stations, however, are a considerable distance from KYPX, and are not “located in the same area” as KYPX.²⁸ Similarly, concerning the fourth statutory factor involving “evidence of viewing patterns in cable and noncable household within the areas served by the cable system,” KYPX concedes that it lacks ratings. It is recognized that relatively new stations that broadcast significant home shopping programming may have limited audiences, and may lack historical carriage on cable systems.²⁹ We further note that Classic challenges KYPX’s claimed status as a specialty station. While it is possible that KYPX may not meet the technical requirements of a specialty station, it, nevertheless, carries a significant amount of specialized programming. However, we do not believe that the issue regarding whether KYPX is a specialty station is decisional because, as explained below, we base our decision primarily on KYPX’s signal coverage and proximity to the cable communities.

10. The second statutory factor is “whether the television station provides coverage or other local service to such community.”³⁰ KYPX does not indicate how the rebroadcasting of news programs from a Little Rock station provides coverage or local service to the cable communities. This program, and the programming involving the games of two semi-professional teams located in Little Rock, are general interest programs for viewers throughout the area and are not directed specifically to the viewers in the cable communities or address the local news or sporting events occurring in these communities.

11. KYPX, however, presents a Longley-Rice signal coverage map which it states reflects that it broadcasts actual City Grade, Grade A or Grade B signal coverage to the cable communities, and that this coverage demonstrates that it provides local service. As discussed above, the Commission accepts service area maps based on the Longley-Rice model because Longley-Rice offers an accurate representation of a station’s technical coverage area by taking into account terrain factors. In reviewing KYPX’s Longley-Rice map, we find that there is City Grade, Grade A or Grade B signal coverage in the cable communities, but for the following communities. The Emmet cable system; and the Lewisville, Stamps and Buckner cable system in Arkansas; and the Cotton Valley and Sarpeta cable system in Louisiana have, in general, only sporadic or irregular Grade B signal coverage. Thus, KYPX fails to demonstrate that it provides local service in these cable communities.

12. Regarding Sibley and Dubberly, Louisiana, KYPX’s Longley-Rice map reflects that Classic has a cable system in Sibley in Lincoln Parish whereas Dubberly is in Webster Parish, about 45 miles west. However, the Commission’s records indicate that a cable system does not exist in Sibley,

²⁷*Supra* notes 10, 13 and 14.

²⁸The distance from Camden, KYPX’s city of license, ranges from approximately 40 miles to Arkadelphia to 85 miles to Little Rock, Arkansas. *See* Petition at Exhibit V.

²⁹*The Chronicle Publishing Company*, 10 FCC Rcd 9474, 9482 (1995).

³⁰*Supra* note 10.

Lincoln Parish, and that Classic operates a cable system in Sibley, Webster Parish, which also serves Dubberly and nearby areas.³¹ KYPX's Longley-Rice map shows that Sibley and Dubberly in Webster Parish and nearby areas do not receive Grade B signal coverage. KYPX, therefore, does not provide local service to Sibley and Dubberly.

13. The third statutory factor is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."³² We believe that Congress did not intend this factor to bar a request to modify a DMA when other stations could be shown to serve the communities at issue. Rather, we believe this criterion was intended to enhance a station's claim where it could be shown that other stations do not serve the communities at issue.³³

14. We therefore grant KYPX's petition to modify its television market to include Calion, Emerson, Fountain Hill, Hamburg, Junction City, Norphlet, Smackover, and Taylor, Arkansas; and Bernice, Dubach, and Junction City, Louisiana. We take this action largely because KYPX provides at least a Grade B signal to these communities based on the Longley-Rice model, and is located in close proximity to these communities. In reaching this conclusion, we place our main reliance on the second statutory factor which addresses whether a television station provides coverage or local service to the communities. Local service can be measured by a station's proximity to, and coverage of its contours, namely Grade B or stronger, over a cable community. Reliance on the second criterion is especially appropriate in cases where historic carriage and audience share (the first and fourth statutory factors) provide little guidance with regard to whether a market should be modified.³⁴ Further, we deny KYPX's petition to the extent that we decline to include the communities of Emmet, Lewisville, Stamps and Buckner, Arkansas; and Cotton Valley, Sarpeta, Sibley and Dubberly, Louisiana in the Little Rock-Pine Bluff, Arkansas DMA. KYPX fails to provide a consistent Grade B signal over these communities.

IV. ORDERING CLAUSE

15. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Section 76.59 of the Commission's rules, 47 C.F.R. §76.59, that the captioned petition for special relief (CSR-6207-A), filed by Arkansas 49, Inc., **IS GRANTED** to

³¹The COALS system. The COALS system is a Commission data base of cable television systems registered with the Commission. Likewise, industry publications show that Classic has a cable system in Sibley, Webster Parish, which serves Dubberly and other nearby areas, and that there is no cable system in Sibley, Lincoln Parish. *Warren Communications News, 2000 Cable & Station Coverage Atlas*, p. 282 & 284; and *Warren Communications News, Television & Cable Factbook 2002*, p. D-584.

³²*Supra* note 10.

³³*See, e.g., Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

³⁴*Agape Church, Inc.*, 14 FCC Rcd 2309, 2317-8 (1999).

the extent indicated herein, and is otherwise **DENIED**.

16. **IT IS FURTHER ORDERED**, under Sections 76.56 and 76.57 of the Commission's rules, 47 C.F.R. §§76.56 and 76.57, that Arkansas 49, Inc. shall notify Classic Cable, Inc. in writing of its channel position election within thirty days of the release date of this order.

17. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

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